

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Scott Talcott,

Case No. 0:18-cv-01616-DWF-HB

Plaintiff,

v.

**First Contact's Answer to Plaintiff's  
Complaint**

Credit One Bank, N.A., et al.,

Defendants.

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Defendant First Contact LLC, incorrectly named as “First Contact, LLC, a/k/a iQor Holdings, Inc.,” (“First Contact”), by and through its attorneys, answers Plaintiff Scott Talcott’s Complaint, as follows:

Except as expressly admitted or qualified hereafter, First Contact denies each and every allegation of the Complaint.

**INTRODUCTION**

1. Paragraph 1 of the Complaint contains a statement to which no response is necessary. To the extent a response is required, First Contact denies that it violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, and denies that it is liable to Plaintiff. To the extent that the allegations in paragraph 1 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

## **JURISDICTION AND VENUE**

2. With respect to the allegations in paragraph 2 of the Complaint, First Contact admits it does not dispute this Court's jurisdiction, except that it denies that Plaintiff has Article III standing under the United States Constitution for his TCPA claim.

3. With respect to the allegations in paragraph 3 of the Complaint, First Contact admits only that it does not dispute this Court's personal jurisdiction over it. To the extent that the allegations in paragraph 3 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them. First Contact denies the remaining allegations in paragraph 3.

4. With respect to the allegations in paragraph 4 of the Complaint, First Contact admits only that it does not dispute venue in this District, except that it specifically reserves the right to seek arbitration of Plaintiff's claims. To the extent that the allegations in paragraph 4 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them. First Contact lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 concerning Plaintiff's residence, and therefore denies them.

## **PARTIES**

5. First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and therefore denies them.

6. Because the allegations in paragraph 6 of the Complaint concern another defendant, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

7. First Contact admits that it is a limited liability company with corporate offices at the address alleged. First Contact admits it is wholly owned by iQor Holdings, Inc. First Contact denies the remaining allegations in paragraph 7 of the Complaint.

8. Because the allegations in paragraph 8 of the Complaint concern another defendant, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

9. First Contact denies the allegations in paragraph 9 of the Complaint. To the extent that the allegations in paragraph 9 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

### **FACTS**

10. The TCPA statute referenced in paragraph 10 of the Complaint speaks for itself, and therefore, no response is required. To the extent that it is intended to stand for additional or inconsistent propositions, First Contact denies the allegations. First Contact denies it violated the TCPA.

11. The TCPA statute referenced in paragraph 11 of the Complaint speaks for itself, and therefore, no response is required. To the extent that it is intended to stand for additional or inconsistent propositions, First Contact denies the allegations. First Contact denies it violated the TCPA.

12. First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint concerning Plaintiff's residence

and therefore denies them. First Contact admits the remaining allegations in paragraph 12 on information and belief.

13. The allegations in paragraph 13 of the Complaint state a legal conclusion, to which no response is required. To the extent a response is required, First Contact denies the allegations. To the extent that the allegations in paragraph 13 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

14. With respect to the allegations in paragraph 14 of the Complaint, First Contact admits it attempted calls to the number alleged beginning on June 11, 2014. First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegation that the number alleged is assigned to a cellular telephone owned or regularly used by Plaintiff and therefore denies the allegations. First Contact denies the remaining allegations in paragraph 14. To the extent that the allegations in paragraph 14 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

15. With respect to the allegations in paragraph 15 of the Complaint, First Contact admits it attempted 6 calls to the number alleged on August 2, 2015. First Contact denies the remaining allegations in paragraph 15. To the extent that the allegations in paragraph 14 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

16. First Contact denies the allegations in paragraph 16. To the extent that the allegations in paragraph 16 concern other defendants, First Contact lacks information or

knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

17. First Contact denies the allegations in paragraph 17. To the extent that the allegations in paragraph 17 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

18. First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and therefore denies them. To the extent that the allegations in paragraph 18 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

19. First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and therefore denies them.

20. First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and therefore denies them.

21. First Contact denies the allegations in paragraph 21 of the Complaint. To the extent that the allegations in paragraph 21 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

22. First Contact denies the allegations in paragraph 22 of the Complaint. To the extent that the allegations in paragraph 22 concern other defendants, First Contact lacks

information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

23. First Contact denies the allegations in paragraph 23 of the Complaint. To the extent that the allegations in paragraph 23 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

24. First Contact denies the allegations in paragraph 24 of the Complaint. To the extent that the allegations in paragraph 24 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

25. First Contact denies the allegations in paragraph 25 of the Complaint. To the extent that the allegations in paragraph 25 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

26. First Contact denies the allegations in paragraph 26 of the Complaint. To the extent that the allegations in paragraph 26 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

27. First Contact denies the allegations in paragraph 27 of the Complaint. To the extent that the allegations in paragraph 27 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

**COUNT I: TELEPHONE CONSUMER PROTECTION ACT**

28. First Contact incorporates by reference its responses to the foregoing paragraphs of the Complaint.

29. First Contact denies the allegations in paragraph 29 of the Complaint. To the extent that the allegations in paragraph 29 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

30. First Contact denies the allegations in paragraph 30 of the Complaint. To the extent that the allegations in paragraph 30 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

31. First Contact denies the allegations in paragraph 31 of the Complaint. To the extent that the allegations in paragraph 31 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

**COUNT II: TELEPHONE CONSUMER PROTECTION ACT**

32. First Contact incorporates by reference its responses to the foregoing paragraphs of the Complaint.

33. First Contact denies the allegations in paragraph 33 of the Complaint. To the extent that the allegations in paragraph 33 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

34. First Contact denies the allegations in paragraph 34 of the Complaint. To the extent that the allegations in paragraph 34 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

35. First Contact denies the allegations in paragraph 35 of the Complaint. To the extent that the allegations in paragraph 35 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

### **COUNT III: INVASION OF PRIVACY**

36. First Contact incorporates by reference its responses to the foregoing paragraphs of the Complaint.

37. First Contact denies the allegations in paragraph 37 of the Complaint. To the extent that the allegations in paragraph 37 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

38. First Contact denies the allegations in paragraph 38 of the Complaint. To the extent that the allegations in paragraph 38 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

39. First Contact denies the allegations in paragraph 39 of the Complaint. To the extent that the allegations in paragraph 39 concern other defendants, First Contact lacks



information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

40. The allegations in paragraph 40 of the Complaint state a legal conclusion, to which no response is required. To the extent a response is required, First Contact denies the allegations. To the extent that the allegations in paragraph 40 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

41. First Contact denies the allegations in paragraph 41 of the Complaint. To the extent that the allegations in paragraph 41 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

42. First Contact denies the allegations in paragraph 42 of the Complaint. To the extent that the allegations in paragraph 42 concern other defendants, First Contact lacks information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies them.

### **JURY TRIAL DEMAND**

43. First Contact admits only that Plaintiff demands a jury trial.

### **PRAYER FOR RELIEF**

First Contact denies that plaintiff is entitled to any of the relief he seeks in the Prayer for Relief section of the Complaint, including its subparts 1. through 6.

### **AFFIRMATIVE DEFENSES**

For its affirmative defenses, Defendant First Contact states the following:

### **First Affirmative Defense: Consent**

The Telephone Consumer Protection Act does not prohibit calls made using an automatic telephone dialing system or using an artificial or pre-recorded voice where the called party has given his or her consent. A creditor can establish consent by demonstrating that the called party provided the cellular telephone number directly to the creditor in connection with the particular debt. First Contact has received consent to make calls to the telephone number identified by Plaintiff in his Complaint, whether through customer agreements, written or verbal statements, or otherwise, and thus her claims are barred.

### **Second Affirmative Defense: Constitutionality of Statutory Damages**

First Contact incorporates by reference the foregoing allegations in its Affirmative Defenses. The Telephone Consumer Protection Act provides for statutory damages of \$500 to \$1,500 for each violation of the law. When directed at telephone calls, statutory damages under the Telephone Consumer Protection Act could quickly rise to thousands of dollars of damages for alleged actions that caused little or no actual damage to Plaintiff. Statutory damages would constitute an excessive fine or penalty without the substantive or procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

### **Third Affirmative Defense: Constitutionality of Statutory Damages**

Claims under the Telephone Consumer Protection Act are subject to a four-year statute of limitations. To the extent calls were made more than four years prior to the filing of Plaintiff's complaint, any claim for those calls is barred by the applicable statute of limitations.

**Wherefore,** First Contact respectfully requests that the Court:

- a. Dismiss all of Plaintiff's claims against First Contact with prejudice and on the merits;
- b. Award First Contact all costs, disbursements, and reasonable attorney fees allowed by law; and
- c. Grant First Contact any such further relief to which it may be entitled.

Dated: July 24, 2018

s/ Erin L. Hoffman  
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